

**\*E-FILED ON 9/6/05\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CITIGROUP GLOBAL MARKETS, INC.,

No. C05-00650 JF (HRL)

Plaintiff,

**ORDER GRANTING DEFENDANT'S  
MOTION TO COMPEL DEPOSITIONS  
AND PRODUCTION OF DOCUMENTS**

v.

CARTER D. CRUM,

**[Re: Docket No. 22]**

Defendant.

On August 30, 2005, this court heard the "Motion to Compel Depositions and Production of Documents" filed by defendant Carter D. Crum. Plaintiff Citigroup Global Markets, Inc. opposed the motion. Upon consideration of the moving and responding papers, as well as the arguments of counsel, the court GRANTS the motion.

This is an action for alleged trade secrets misappropriation based on the court's diversity jurisdiction. Plaintiff alleges that defendant, a former employee, stole its proprietary customer information and used that information to solicit its customers to move their business to defendant's new employer.

On February 28, 2005, the District Court granted in part and denied in part plaintiff's motion for a preliminary injunction and also granted plaintiff's motion for expedited discovery. Pursuant to that order, both parties conducted some discovery, including depositions. In April 2005, the parties executed a Uniform Submission Agreement for binding arbitration of this matter before the National

1 Association of Securities Dealers (NASD). On July 18, 2005, defendant filed the instant motion to  
2 compel. On that same day, plaintiff requested that NASD set an arbitration hearing. On July 29,  
3 2005, pursuant to the parties' stipulation, the District Court referred the matter for a NASD  
4 arbitration.

5 Defendant moves for an order of this court compelling plaintiff to produce five of its employees  
6 for deposition (i.e., David McGrouther, Holly Stowell, Bob Manning, Jennifer Michaelson and John  
7 Longley), as well as for an order compelling each of these individuals to produce requested  
8 documents. Defendant argues that these employees have information that is relevant to its "unclean  
9 hands" defense – i.e., that Smith Barney itself engages in the same conduct of which it complains in the  
10 instant action. He states that each deposition will take no more than a couple of hours to complete.

11 Plaintiff broadly asserts that the individuals defendant seeks to depose have no information  
12 pertinent to this matter. However, the crux of its opposition is that (1) the District Court granted only  
13 plaintiff the right to conduct expedited discovery; (2) the parties have agreed to binding arbitration  
14 before NASD, which has its own discovery rules; and (3) permitting defendant to obtain parallel  
15 discovery in this court would potentially lead to inconsistent discovery rulings in the NASD  
16 proceeding.

17 This court concludes that fairness dictates that defendant's motion should be granted. He has  
18 made a sufficient showing that the five individuals he seeks to depose have information that is relevant  
19 or reasonably calculated to lead to the discovery of admissible evidence. *See* FED.R.CIV.P. 26(b);  
20 *see also, e.g., Salomon Smith Barney, Inc. v. Vockel*, 137 F. Supp.2d 599 (E.D. Pa. 2000)  
21 (concluding that injunctive relief was precluded by the "unclean hands" doctrine). As noted above,  
22 both parties have conducted some discovery pursuant to the District Court's February 28, 2005  
23 order.<sup>1</sup> Plaintiff apparently has conducted the federal discovery it wanted, and this court concludes  
24 that defendant should also have an opportunity to complete the depositions it says that it needs. In any  
25 event, the record indicates that the NASD arbitration panel (1) is aware of defendant's desire to  
26 obtain the discovery at issue, as well as of this instant motion to compel, and (2) has continued the

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28 <sup>1</sup> At the hearing, plaintiff's counsel said that all of plaintiff's expedited discovery was  
completed in March 2005. However, the record indicates that plaintiff continued to pursue such  
discovery in late May 2005. (*See* Louderback Decl., Ex. E).

1 arbitration hearing to December 5, 2005 to allow time for defendant to complete the discovery that  
2 this court may order on the instant motion. (*See* Louderback Reply Decl., ¶ 10).

3 Based on the foregoing, IT IS ORDERED THAT:

4 1. Defendant's motion to compel is GRANTED. **No later than September 20, 2005,**  
5 plaintiff shall produce all responsive, non-privileged documents in response to defendant's requests.  
6 Any claimed confidential information shall not be used or disseminated for any purpose not directly  
7 related to the prosecution or defense of this matter.<sup>2</sup>

8 2. Plaintiff shall promptly produce the requested individuals for deposition at a mutually  
9 agreeable time and place, such that the depositions may be completed well in advance of the  
10 December 5, 2005 arbitration hearing, and so as not to derail the parties' preparation for that hearing.

11 Dated: September 6, 2005

12 /s/ Howard R. Lloyd

13 HOWARD R. LLOYD  
14 UNITED STATES MAGISTRATE JUDGE  
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28 <sup>2</sup> To the extent the parties decide that other or further protection of the information is appropriate, they should meet-and-confer to attempt to agree upon additional terms.

1 5:05-cv-650 Notice will be electronically mailed to:

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